Advocis
The Financial Advisors Association of Canada

November 12, 2020

Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9

SENT VIA ONLINE SUBMISSION SYSTEM

Dear Sirs/Mesdames,

Re: Financial Services Regulatory Authority of Ontario
Notice of Proposed Rule and Request for Comment
Proposed Rule [2020-001], Financial Professionals Title Protection

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments in regards to the Financial Services Regulatory Authority of Ontario ("FSRA") and its Proposed Rule [2020-001], *Financial Professionals Title Protection* (the "Proposed Rule").

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, and life, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence. No one spends more time working with consumers on financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need. In all that they do, our members are fundamentally driven by Advocis' motto, *non solis nobis* – not for ourselves alone.

2. INTRODUCTION

Advocis strongly supports Ontario's title protection initiative and FSRA's leadership in its implementation. We believe that this initiative must fundamentally be about consumer protection: the titles of Financial Advisor (FA) and Financial Planner (FP) are consumer-facing and ubiquitous in their use. Our own studies have shown that consumers erroneously believe that these titles are already regulated,[1] signalling a level of professional skill and oversight that is not grounded in reality. The fact that the titles are not regulated in Ontario, combined with consumers' misplaced trust in these titles, puts Ontarians at unacceptable risk. The Proposed Rule marks a major step towards addressing this untenable situation.

We understand that with the Proposed Rule, FSRA seeks to set minimum standards for the use of each title and not necessarily harmonize standards for each title. We appreciate that FSRA is mindful of keeping the Province "open for business" and avoiding unnecessary barriers to access or creating a drag on economic growth and employment. We see this as a sensible approach and one that accommodates the wide variety of credentials in the marketplace and the diversity of consumer needs.

Nonetheless, we believe that the primary focus must remain on how the title protection initiative will benefit consumers. To that end, we urge FSRA to ensure that the minimum standards it establishes for both the FA and FP titles represent a meaningful enhancement to the standards that consumers face today. We note that other professions with regulated titles such as architect, optician and dental hygienist demand that their users complete formal professional training *prior* to using the title with consumers – that is, the bar of initial proficiency is set high, in addition to those professions' elevated ongoing standards in regards to conduct and oversight by their professional bodies.

Further, we draw attention to the fact that the way consumers access advice and planning services has changed over the years. FAs and FPs were once seen primarily as transactional conduits to purchasing product. Over time, their role has evolved, with the client relationship now taking centre stage. As noted in the Proposed Rule's competency profiles, both FAs and FPs engage their clients to understand their financial priorities, needs and objectives, and any discussion and transaction in suitable product forms part of the strategy to achieve those priorities.

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[1] In October 2018, Advocis asked 1,500 Ontarians about their thoughts on the regulation of Financial Advisors. The poll, carried out by Abacus Data, yielded eye-opening results:

- 56% of respondents believed the title "Financial Advisor" is already regulated;
- 80% believed that a professional code of conduct for Financial Advisors should be mandatory; and
- 91% supported legislation that regulates the title Financial Advisor.

Advocis conducted similar polls in other provinces, and the results were similar.

All of the foregoing is to emphasize the following: a qualifying credential for either the FA or FP title should offer rigorous education regarding both technical knowledge and client relationship management. FSRA should not recognize a credential or license that is based primarily on product sales, as that is an antiquated view of consumer needs. Instead, FSRA's selection of credentials should be based primarily on whether they serve to enhance the quality of the client-advisor relationship, or what FSRA terms "client outcomes" in the Proposed Rule.

A credential or license based on product sales handcuffs the client relationship and effectively predetermines that the client outcome will include a recommendation to purchase the licensed product. Even if the recommendation can be characterized as suitable, this "cart before the horse" approach to advice and planning does not put consumers first.[2] We are pleased that FSRA acknowledges this in the Proposed Rule in regards to the Life License Qualification Program, noting that the Program is unlikely to satisfy FSRA's competency criteria because the critical "client outcomes" function is necessarily impaired.

It is true that certain regulatory reforms, such as the client-focused reforms ("CFRs") being promulgated by the Canadian Securities Administrators ("CSA"), are intended to enhance various aspects of the client relationship. However, there are two caveats to highlight here: first, the CFRs are not yet in effect, as their implementation only begins in the middle of next year. Based on the CSA's release of its Frequently Asked Questions regarding CFR implementation,[3] it is clear that there is much to do and learn before the CFRs can achieve the CSA's policy goals. We would caution against seeing the CFRs as a panacea that will bring about the desired client outcomes in the expected timeframes.[4]

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[2] We believe we are one of relatively few stakeholders that FSRA will hear from that is in a position to opine on this subject fairly. We represent thousands of financial advisors and planners who meet with clients directly and provide them with the financial advice and literacy they need. Nearly all of our members have successfully completed mutual funds and insurance product licensing. On the strength of their input, we are able to offer a unique product-agnostic and cross-sectoral view of the modern consumer.

Our members have resoundingly told us that neither insurance nor mutual fund licensing is sufficient to demonstrate the professionalism and client-centric thinking that modern consumers deserve. If FSRA generally accepts that consumer needs have evolved into an advice-first mindset over a product-first mindset, we believe it would be impossible to justify a product-first credential as qualifying for a title protection framework that must, at its core, be about consumer protection.

[3] Canadian Securities Administrators, *Client Focused Reforms: Frequently Asked Questions* (September 28, 2020). At: https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CFRs_FAQs_E.pdf.

[4] Consider the impact of other major CSA initiatives aimed at enhancing consumer outcomes: the Point-of-Sale initiative and Phase 2 of the Client Relationship Model. Both initiatives primarily rely on written disclosure to enhance consumer comprehension of fees and performance. In August 2020, the CSA released the results of a

Second, even if the CFRs achieve their intended enhancements to elements such as know-your-client, know-your-product, suitability and conflict of interest management, we must be mindful that the CFRs do nothing to enhance the initial proficiency of a licensee. That is, the CFRs do not enhance the training of would-be FAs or FPs, or their "day one" professionalism, before they would be able to use those titles with the public. This is in stark contrast to other professions with restricted titling, where training is designed to protect consumers by ensuring baseline proficiency must be completed before the titles can be used in a public-facing setting.

In fact, proceeding with a title protection regime without raising standards beyond product licensing could actually put consumers at greater risk than before. This scenario would give consumers a false sense of security that the now-restricted titles are meaningful proxies for professionalism when it would effectively be the *status quo*. This problem would be exacerbated by the regulator- and government-backed consumer education campaigns that FSRA inquires about as part of this consultation.

We do not believe that incorporating high initial proficiency standards will harm employment in the financial services sector, as the Proposed Rule contemplates title protection and not scope protection. Individuals who fail to achieve a recognized credential to use the restricted titles are not removed from the industry. Instead, they can simply continue to work under another title, with consumers benefiting from the clear distinction between those intermediaries that have achieved a certain level of professionalism and the right to use restricted titles from those who have not.

The title protection initiative is a once-in-a-generation opportunity to get it right and enhance consumer protection. It is important that this exercise stands for something and that we, collectively, raise the bar. For other recognized professions, a sales license is not a professional credential. We submit that it should be no different for FAs and FPs, as their clients deserve no less. The Proposed Rule may be predicated on establishing minimum standards, but we (collectively – industry, consumers and regulators alike) should be striving for better.

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multi-year tracking study, which found that the results of these initiatives were mixed and degrees of investor confusion persisted.

We believe this result demonstrates that despite best intentions, it is undesirable to take an *ex ante* approach by assuming that any particular regulatory initiative (including the CFRs) will achieve its objectives as originally envisioned. It would be especially risky to build new initiatives, such as the title protection framework, on a foundation of relying on the success of other regulatory initiatives of yet unproven efficacy.

We further believe this result reinforces the need for truly professionalized advice and planning. Clients can receive all the written disclosure in the world but it does not equate to comprehension. It is through the professionalization of the client relationship that client outcomes can best be prioritized.

The CSA study is available at: https://www.osc.gov.on.ca/documents/en/Publications/20200827_csa-summary-report-research-findings-impact-of-crm-2-pos-investor-knowledge-attitudes-behaviour.PDF.

3. OUR COMMENTS

Our specific responses regarding the Proposed Rule are as follows.

Q1: FP and FA Credentials
FSRA is seeking feedback on the above approach and whether the Proposed Rule and FP and FA baseline competency profile adequately reflect the technical knowledge, professional skills and competencies that should be included in a credentialing body's education program to establish the minimum standard for FP and FA title users.

FP Baseline Competency Profile
In our view, the proposed FP baseline competency profile is appropriate (with the caveat below about errors and omissions insurance), so long as the expectation is that the credential provide education in each of those six technical areas as part of its curriculum. This is in contrast to an expectation that an FP title user actively engage in the practice of each of those areas. In practice, it is exceedingly rare that any FP will be engaged in all six areas in meaningful depth.

FA Baseline Competency Profile
We believe the proposed FA baseline competency profile should be modified in regards to the technical knowledge requirement. Currently, the requirement is for an FA credential to provide education in "one or more" of the six technical categories. For the reasons stated in our introductory comments, we believe this is insufficient as it is too product-focused and could impair consumer outcomes by restricting the breadth of advice. Instead, we believe that an FA-level credential should – initially – require technical education in at least four of the six categories, with a firm view to elevating this expectation to all six categories in the future.

More generally, we are concerned that the FA baseline competency profile seems to position FAs as somehow "lesser" than FPs, which is a fallacy that we wish to dispel. We understand that during its pre-consultation meetings, FSRA found that there was a lack of consensus regarding who FAs are and what exactly they do. We recognize that FAs can be more difficult to define than FPs: FAs come in all shapes and sizes, and they are as varied as the clients they serve. While the work of both FAs and FPs can touch upon the same technical areas, an FA's work tends to be more discrete than an FPs and its scope more tailored to the client's acute needs.

It is true that an FA's work generally does not result in the presentation of a formal, written holistic financial plan that touches upon multiple technical topics, which we see as the signature characteristic of the FP baseline competency profile. But very few clients actually require a financial plan of this nature – and it is quite rare for FP-qualified individuals to even produce such plans. Rather, an FA typically helps clients through a deeper dive into fewer financial topics that are of immediate concern to the client.

This is not to say that FAs do not help clients in a holistic manner. What frequently happens is that over time, that client returns to their trusted FA to seek additional advice on other topics as their personal circumstances evolve, on an as-needed basis. In this way, FAs effectively provide many clients with "modular" financial plans, built through relationships that last many years. Individual financial topics are addressed at the time clients actually need the advice, arguably in greater depth and with more relevance than what is covered by a point-in-time holistic financial plan.

The scope of an FA's immediate mandate may be narrower relative to an FP's, but the FA's work is often deeper and more impactful within that mandate. So an FA's clients are deserving of no less when it comes to their advisor's conduct, skill and knowledge. FAs and FPs are both professionals, and the qualifying credentials for both titles should reflect that professionalism. FSRA would be remiss to approach the framework under any other impression.

E&O Insurance

We believe both FA and FP credentials should require their holders to maintain errors and omissions insurance in an amount of at least $1 million in respect of any one occurrence with extended coverage for loss resulting from fraudulent acts. This requirement aligns with FSRA's expectations of its life licensees and is a fundamental safeguard for consumers accessing professional advisory and planning services.

Grandfathering and Alternative Pathways

The Proposed Rule makes clear that a grandfathering provision will not be part of the title protection initiative. We support this, as metrics such as years of experience alone do not necessarily mean those individuals are professionals worthy of a restricted title. At the same time, we are mindful that there is a sizeable cohort of practitioners who have been working professionally and ethically for decades and, due to their busy and well-established practices, may not have sufficient time to enroll in and complete a credentialing program before the title restrictions come into force, notwithstanding the transition period in the Proposed Rule.

Therefore, we ask that FSRA consider allowing approved credentialing bodies to develop alternative pathways to their credentials, such as through a condensed course and/or challenge exam. It would be incumbent on the credentialing body offering the alternative pathway to demonstrate that all aspects in the respective competency profiles are addressed and that consumer protection is in no way compromised.

The credentialing body could restrict access to the alternative pathway to specific candidates, such as those advisors and planners that have practiced for a certain number of years and have a clean disciplinary history, and the alternative pathway itself could be available for a limited time period after title protection comes into effect. While these details are still to be sorted out, we believe that having an alternative pathway is important to accommodating the variety of seasoned FAs and FPs.

Q2: Disclosure
FSRA is seeking comments on whether FP and FA title users should be required to disclose to their clients the credential they hold that affords them the right to use an FP or FA title. FSRA is seeking feedback on the form that this disclosure could take and the overall consumer benefits it could achieve.

Yes, we strongly agree that FP and FA title users should be required to disclose the credential that affords them the right to use that title. FSRA has stated that its aims in the title protection initiative are to "establish a common minimum standard across title users so that consumers can reasonably rely on the person with whom they are dealing to be qualified to use the title." This mission contemplates some variation in the standards and rigour of the credentials recognized at each of the FA and FP levels. Consumers have a right to know about these differences.

Without disclosure of the specific credential (if just the blanket title of FA or FP was disclosed to the consumer without emphasis on the credential), the title protection initiative would incent a race to the bottom, where prospective title users would naturally seek the easiest/least rigorous way of achieving access to the restricted title.

In contrast, by requiring the disclosure of the credential (along with an expansive consumer education campaign, discussed in Q5 below), consumers could appreciate that not all credentials are created equal. This would create consumer demand for those FAs and FPs who have earned higher-quality credentials, thus incenting prospective title users to pursue those quality credentials. Proper disclosure could incent a race to the top.

Disclosure of the credential should also go hand-in-hand with disclosure of the credentialing body. This is for a very practical purpose: should the consumer have a complaint about the FA or FP, the consumer needs to know the identity of the credentialing body to engage that body's complaints, investigations and disciplinary infrastructure.

Regarding the form of disclosure, we believe that in any form of written communication (such as a business card, email signature, or otherwise), the title user should use the restricted title (whether FA or FP). Immediately after in subscript or parentheses, the name of the credential and credentialing body should be disclosed. For example, a business card could appear as follows:

Verbal disclosure could be simpler for practical purposes. We would suggest a script along the lines of the following: "I am a Financial Advisor because I've earned the Professional Financial Advisor credential."

Q3: Exemptions
FSRA is seeking comments on whether the framework should allow for any exemptions. In particular, FSRA is requesting comments on the principles governing an exemption regime, the extent to which exemptions may be required, to whom they should be made available (if at all), and the benefits and drawbacks of permitting exemptions.

The financial services sector is varied and diverse, and we do not believe in a one-size-fits-all model. We believe there may be instances where other recognized professionals should be exempt from the framework in the Proposed Rule, but should nonetheless be allowed to use the titles of FA or FP. However, consumer protection must not be compromised.

We believe that limited exemptions could be based on the following principles:

- The exemption would be for members of a self-regulating profession that is recognized in a separate piece of legislation.
- The profession must carry out the fundamental duties of a credentialing body, including having a complaints, investigations and disciplinary function.
- The profession's members must be governed by a code of conduct that includes a commitment to prioritizing client interests.
- To enter that profession, one must complete a credential or degree that includes in its curriculum the client relationship and technical skills expected at the FA or FP level, as applicable.

Any exemptions granted by FSRA should be revisited from time-to-time to ensure that there are no developments or unforeseen consequences that impair consumer protection.

The benefit of allowing limited exemptions is to minimize the regulatory footprint of the Proposed Rule by respecting the vibrancy and diversity of the financial services sector and leveraging existing, effective legislative and self-regulatory consumer protection infrastructure.

Q4: Fees and Assessments
The FPTPA requires credentialing bodies to collect from approved credential holders any fees FSRA requires those individuals to pay, and to remit those fees to FSRA. FSRA has the authority to make rules regarding the collection, holding and remittance of such fees. FSRA is seeking comment on this fee structure, including whether it allows for fair cost recovery, or if there are any operational challenges that credentialing bodies may experience with such a fee structure.

We believe this proposed fee structure, which requires that fees remitted to FSRA from the individual title holders flow through the credentialing bodies, is fair. The operating costs of the title protection framework should be borne by the individuals who are subject to the framework, as they will benefit from higher public standing and trust.

Q5: Consumer Education
FSRA is seeking input on options for consumer education campaigns to support and follow implementation. As mentioned above, FSRA is also seeking feedback from stakeholders on how government, regulators, credentialing bodies and industry can educate consumers on financial planning and financial advising services in Ontario and on FP and FA title use.

For the title protection initiative to be successful, we believe that two key elements must be satisfied:

1) Title protection must bring about genuinely higher professional standards for users of the restricted titles.
2) Consumers must be made aware that the titles are now reliable proxies of those higher standards, including in regards to title users' knowledge, skill and professionalism.

We have discussed our views on the first element earlier in this submission.

Regarding the second element – consumer education – it is critical that consumers understand the change in landscape, in that the titles of FA and FP will now be officially protected and reliable proxies for professionalism. With this change, consumers must also be made aware that there are a variety of recognized credentials to look for on the market when seeking financial planning or advice, and just what those titles and credentials stand for (and how they differ from one another). We recognize at the outset this is no small task, and a significant investment is required from the government and its regulators (including FSRA and the Ontario Securities Commission) to make this happen.

We recommend that government commit to an outreach campaign to mass-market Ontarians through traditional and social media, and regulators bolster these efforts by leveraging the reach and legitimacy of their consumer-facing communications channels, such as the OSC's Investor Office.

This is not a small ask, but there are two key facets to keep in mind. First, the title protection initiative is of no benefit if consumers, the very focus of this initiative, are not made aware of how the landscape has changed regarding FAs and FPs. Second, this is a good news story and a major accomplishment for the government and FSRA – it is one that the government should be eager to promote, particularly in the face of all of the difficult news that has dominated the majority of this year and threatened Ontarians' well-being, including financially.

As a key stakeholder in the title protection initiative, Advocis is prepared to engage our 6,500 members in the province to bring the message directly to the hundreds of thousands of families and small businesses they serve. Our members will deliver the message personally as part of their service of educating clients on the key aspects of the regulatory framework that impact the advice and planning they receive.

Financial Professionals Title Protection – Administration of Applications
Credentialing Bodies – Criteria and Duties

A required characteristic of a recognized credentialing body should be that it operates on a not-for-profit basis, with oversight by a board of trustees or directors that is committed to the mission of advancing professionalism and protecting the public, rather than maximizing returns for shareholders. It is our position that faithfully fulfilling this mission requires a level of impartiality that cannot be achieved in a for-profit model.

Where directors and officers are bound to prioritize the interests of shareholders, moral hazards and conflicts of interest arise that make it impossible to maintain a steadfast focus on quality standards – especially where reducing those standards may generate greater profits. For example, a profit-motivated credentialing body may be incented to make its credential easier to achieve to attract marginal students at the expense of advisor proficiency and consumer protection.

A for-profit motive invites the type of unhealthy competition that could lead to a race to the bottom. This is the antithesis of what the Title Protection framework should encourage. Credentialing bodies should focus on establishing and enforcing rigorous standards for FAs and FPs, in the public interest with a clear mind and without distraction – which means without consideration of private financial gain.

4. CONCLUSION

We thank FSRA for the opportunity to provide our comments on the Proposed Rule. As stated by FSRA in its Proposed FY2021-2022 Statement of Priorities, the title protection framework "will promote confidence and professionalism in the sector and reduce confusion for investors

and consumers."[5] These are potentially tremendous benefits for all stakeholders – but only if we get the implementation right.

We are firmly of the view that professionalism cannot be advanced by simply enshrining a trusted title to existing practices that clearly fall short of professional standards. Restricting titles without commensurately raising existing standards can even exacerbate the problem, because consumers rightly expect that when a regulator or government restricts a title, it is doing so with purpose, to separate professionals from the rest.

The drive to professionalism must be based on client outcomes. This is why licenses or registrations based on product sales should not qualify under the framework. Even if product-based conduct is improved at the periphery, it does nothing to enhance the initial proficiency of the client-facing intermediaries who would be empowered to use the restricted title on day one. This would not be a win for consumer protection. Instead, credentials that qualify under the framework must be developed with a focus on the client relationship and be detached from any one product sector. That is what modern consumers seek from their FAs and FPs.

Finally, in regards to FAs and FPs themselves: both are professionals and both engage in work involving similar technical concepts. While FPs are easier to conceptualize as the scope of their work is grounded on the idea of producing a specific deliverable, the work of FAs is diverse and discrete in scope, deeper in focus and equally as impactful in their clients' lives. We would urge FSRA to be mindful of this reality when it considers the rigour of the credentials that should qualify for each of the FA and FP titles.

Title protection can meaningfully improve the financial well-being of Ontarians and correct longstanding misperceptions that have put consumers at risk. We firmly believe that as long as FSRA puts consumers at the heart of this exercise, many of our recommendations in this submission will resonate. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors

[5] Financial Services Regulatory Authority of Ontario, *Proposed FY2021-2022 Statement of Priorities* (October 13, 2020), page 3. At: https://www.fsrao.ca/media/2326/download.